

Supreme Court of the United States  
FILED

OCT 18 1978

MICHAEL NOLAN, JR., CLERK

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In the  
Supreme Court of the United States

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No. 78-456

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STATEWIDE CONTRACTORS, INC.,  
and NATHAN H. KELLY,

*Petitioners,*

vs.

FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL &  
BANKER, P. A. PROFESSIONAL ASSOCIATION,  
and JERRY B. LANDIS,

*Respondents.*

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BRIEF OF RESPONDENTS  
IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI

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**SUPREME COURT RULE INVOLVED**

Supreme Court Rule 56(4) states:

"Where a petition for a writ of certiorari has been filed, and there appears to be no ground for granting such a writ, the court may, in appropriate cases, adjudge to the respondent reasonable damages for his delay."

**QUESTION PRESENTED FOR REVIEW**

WHETHER THE SUPREME COURT SHOULD ADJUDGE PETITIONERS RESPONSIBLE FOR DAMAGES FOR THE DELAY CAUSED BY FILING THIS GROUNDLESS PETITION FOR WRIT OF CERTIORARI, WHERE THE OPINION OF THE TRIAL COURT, AFFIRMED PER CURIAM BY TWO STATE APPELLATE COURTS, HELD THERE WERE SUFFICIENT MINIMUM CONTACTS BETWEEN PETITIONERS AND THE COMMONWEALTH OF PENNSYLVANIA, MAKING THE EXERCISE OF IN PERSONAM JURISDICTION ON PETITIONERS CONSISTENT WITH TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE, AND WHERE THE PETITION FOR WRIT OF CERTIORARI WAS FILED SOLELY FOR DELAY.

**COUNTER-STATEMENT OF THE CASE**

This Counter-Statement of the Case is made to correct inaccuracies or omissions in the Statement of the Case made by the Petitioners.

The agreement for legal services made by all parties was entered into on September 5, 1972, at the Greater Pittsburgh International Airport in Allegheny County, Pennsylvania. As stated in the Trial Court's Opinion, both Ronald D. McCall, Esquire, from Fowler, White, and Jerry B. Landis,

Esquire, gave deposition testimony supporting the date, time and place of entering into this agreement in Allegheny County, Pennsylvania.

**REASONS FOR DENYING THE WRIT OF  
CERTIORARI AND IMPOSING DAMAGES ON  
PETITIONERS FOR DELAY CAUSED BY FILING  
THIS GROUNDLESS PETITION**

**THERE IS ABSOLUTELY NO BASIS FOR THIS  
PETITION FOR WRIT OF CERTIORARI SINCE  
THE RECORD AND TRIAL COURT OPINION  
FULLY SUPPORT THE EXERCISE OF IN PER-  
SONAM JURISDICTION ON THE PETITION-  
ERS.**

**FURTHER, BECAUSE THIS PETITION DOES  
NOT SET FORTH GROUNDS FOR GRANTING  
THE WRIT, THE SUPREME COURT SHOULD  
ADJUDGE PETITIONERS RESPONSIBLE FOR  
DAMAGES AND DELAY WHICH THIS PETI-  
TION HAS CAUSED.**

**THE SUPREME COURT SHOULD ADJUDGE  
PETITIONERS RESPONSIBLE FOR DAMAGES  
PURSUANT TO THIS COURT'S RULE 56(4) TO  
DETER OTHER GROUNDLESS PETITIONS FOR  
WRIT OF CERTIORARI.**

The Trial Court Opinion makes it crystal clear that there is in personam jurisdiction on STATEWIDE and KELLY in the Court of Common Pleas of Allegheny County, Pennsylvania. There is simply no ground to support the Petition for Writ of Certiorari.

Rule 56 of the Supreme Court provides for this Honorable Court to award damages for delay caused by the filing of this Petition.

This case affords this Honorable Court an excellent opportunity to provide relief to the Respondents and to again remind future litigants that Petitions for Writ of Certiorari filed for delay purposes are subject to damage awards for the respondents.

In this case, the Record shows the Complaint was filed on August 9, 1976.

The Trial Court wrote a thorough opinion applying the applicable statutes and case law. The Trial Court's Opinion and Order were filed on April 21, 1977.

Notwithstanding this Opinion from the Trial Court, Petitioners filed an appeal in the Superior Court of Pennsylvania. The Superior Court affirmed the Opinion and Order of the Trial Court on February 15, 1978. Consequently, Petitioners accomplished an additional delay of approximately ten months as a result of the Appeal to the Superior Court.

Petitioners were not content to terminate the already protracted delay. Petitioners then filed a Petition for Allowance of Appeal in Supreme Court of Pennsylvania. On August 3, 1978, the Supreme Court of Pennsylvania denied this Petition. At this point, the Petitioners had accomplished a delay of nearly two years since Respondents filed their Complaint.

It is now October, 1978, and the delay in this case goes on as a result of this Petition for Writ of Certiorari.

It is evident that the only conceivable cause for this Petition comes in the delay that Petitioners anticipate and achieve in the appeal process.

It is well known that the Supreme Court of the United States receives hundreds of petitions for writ of certiorari each year. With this Honorable Court being the final guide and interpreter on many important issues, it is imperative

that this Court be free to address itself to the appropriate cases. Groundless petitions for writ of certiorari only delay respondents from their entitled relief and deplete this Honorable Court's resources.

This case is an excellent opportunity for this Honorable Court to deter groundless petitions. Imposing damages on Petitioners here for this more than two year delay would serve clear notice to the legal community that the Supreme Court will not provide impunity to those who file these groundless petitions.

**CONCLUSION**

It is respectfully requested that this Petition for Writ of Certiorari be denied.

It is further respectfully submitted that appropriate damages be adjudged to Respondents, including reasonable attorneys' fees incurred by Respondents, in the three appeals filed by Petitioners, to be determined by the Trial Court, and a ten percent (10%) per annum interest on any final judgment entered on behalf of Respondents.

Respectfully Submitted,

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**PROOF OF SERVICE**

I hereby certify that I am on this day serving the foregoing Brief in Opposition to the Petition for Writ of Certiorari to the persons named below by first class mail:

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Dated: October 16, 1978

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BY: /s/ FREDERICK N. EGLER

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